



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: White Shield, Inc.
File: B-235967
Date: October 30, 1989

DIGEST

Contracting agency must solicit traditional surveying and mapping services by Brooks Act procedures instead of competitive proposals where the services may be logically or justifiably performed by an architectural engineering firm, regardless of whether they are related to an architectural-engineering project.

DECISION

White Shield, Inc., protests the issuance of request for proposals (RFP) R1-5-89-62, issued by the Forest Service, United States Department of Agriculture, for cadastral survey work at the Clearwater National Forest, Idaho. White Shield alleges that the services being procured are included in the definition of architectural and engineering (A-E) services and thus require the use of specialized procedures prescribed by the Brooks Act, 40 U.S.C. § 541-544 (1982), as amended by Pub. L. No 100-656, § 742, 102 Stat. 3853 (1988) and Pub. L. No. 100-679, § 8, 102 Stat. 4055 (1988).

We sustain the protest.

The Forest Service states that the project was initially advertised in the Commerce Business Daily as an A-E project. After the announcement, however, the definition of A-E services in the Federal Acquisition Regulation (FAR) was amended to implement the revised definition of A-E services contained in the 1988 amendments. The contracting officer then determined that cadastral surveying did not fall within the definition of A-E services. Consequently, the agency canceled the A-E solicitation and issued an RFP.

By letter dated May 26, 1989, White Shield filed a protest with the agency requesting that the contracting officer readvertise the project as an A-E solicitation utilizing

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the Brooks Act procedures. The contracting officer reexamined his position and the applicable regulations and reaffirmed his finding that cadastral surveying does not fall within the meaning of A-E services. This protest followed.

Subsequent to the filing of the protest and the submission of the Forest Service's report, we issued a decision in response to a similar protest by White Shield alleging that the Forest Service improperly used standard competitive procedures to secure cadastral surveying services. We sustained the protest, explaining that surveying and mapping services including cadastral surveying traditionally performed by members of the architectural and engineering professions (and individuals in their employ) are clearly subject to the Brooks Act. See White Shield, Inc., B-235522, Sept. 21, 1989, 68 Comp. Gen. ___, 89-2 CPD ¶ ___. We find this case indistinguishable from the White Shield, Inc., decision.

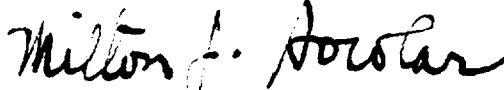
The contracting officer's determination that cadastral surveying does not fall within the definition of A-E services was based on clause (B) of the 1988 amendment which includes under the definition of architectural or engineering services those services performed by contract that are "associated with research, planning, development, design, construction, alteration, or repair of real property." As indicated in White Shield, Inc., however, clause (C) of the 1988 amendment includes in the definition of the term "architectural and engineering services" "other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including . . . surveying and mapping . . . services." 40 U.S.C. § 541 (1982), as amended by Pub. L. No. 100-656, § 742, 102 Stat. 3853, Pub. L. 100-679, § 8, 102 Stat. 4055 (1988). Further, we concluded that the legislative history of the amendment supports the argument that agencies are required to use Brooks Act procedures for procuring traditional surveying and mapping services. See White Shield, Inc., B-235522, supra.

In our prior White Shield, Inc., decision, we specifically rejected the contracting officer's position that the test to be applied is whether the service is incidental to an A-E project; rather, we concluded that, based on the 1988 amendment, the test now includes whether the service is of an architectural or engineering nature, or an incidental service, which members of the architectural and engineering professions may logically or justifiably perform.

The contracting officer's determination regarding the Brooks Act's applicability to a particular procurement must be consistent with the statutory and regulatory requirements. In this regard, the Brooks Act amendment specifically lists surveying and mapping as examples of services which members of the architectural and engineering professions may logically or justifiably perform. Therefore, surveying and mapping services traditionally performed by members of the architectural and engineering professions (and individuals in their employ) are clearly subject to the Brooks Act procedures. Since there is no indication that the surveying and mapping services involved here are not traditional A-E services, and in fact appear to be identical to work which we have previously found subject to the Brooks Act procedures, Brooks Act procedures should have been applied.^{1/} White Shield, Inc., B-235522, supra. Therefore, the protest is sustained.

The normal recommendation that the procurement be resolicited in accordance with the Brooks Act procedures is impractical in this case because the contract has already been fully performed. White Shield is entitled, however, to the reasonable costs of pursuing this protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1989). White Shield's claim for such costs should be submitted directly to the Forest Service. 4 C.F.R. § 21.6(e).

We sustain the protest.



Acting Comptroller General
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^{1/} The contracting officer points out that, under Idaho state law, land survey work is distinct from engineering work and thus argues that surveying should not be covered by the Brooks Act procedures. However, as indicated above, the Brooks Act, as amended, applies to all traditional surveying work that is performed by members of the architectural and engineering professions (and individuals in their employ) including licensed surveyors.